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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

APR 23 2004

FILE: [redacted] Office: SAN ANTONIO, TEXAS Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 301of the Immigration and Nationality Act, 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director / District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant was born on April 15, 1961, in Coahuila, Mexico. The applicant's father was born in Mexico on November 12, 1935. Mr. acquired U.S. citizenship at birth through his U.S. citizen father, and Mr. obtained a certificate of U.S. citizenship on December 8, 1976. The applicant's mother was born in Mexico, and is not a U.S. citizen. The applicant's parents were married on January 7, 1956, in Coahuila, Mexico. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The director / district director found the applicant had failed to establish that his father was physically present in the United States or its outlying possessions for a period totaling ten years, at least five years of which occurred after Mr. reached the age of fourteen. The application was denied accordingly.

On appeal, counsel asserts that the director / district director did not request physical presence evidence from the applicant. Counsel implies that the application was therefore improperly denied.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in pertinent part, that, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed."

The director / district director's decision to the applicant and the Form I-290B, Notice of Appeal to the Administrative Appeals Office (Form I-290B) state clearly that the appeal of an unfavorable decision must be made to the AAO within 30 calendar days of the decision (33 days if the decision is mailed). The Form I-290B filed by counsel instructs further that, "if an applicant needs more than 30 days to file an appeal, the applicant must explain why in a separate letter attached to the Form I-290B. The AAO will grant more time only for good cause.

The record reflects that the director / district director's decision denying the application is dated June 26, 2002. Signed certified mail receipts contained in the record reflect that counsel received notice of the decision on June 28, 2002, and that the applicant received notice on July 8, 2002. The record reflects that the applicant's appeal was filed on September 5, 2002, well after the 30 (33) days allowed for filing, and the appeal contained no letter or information explaining the cause for the late filing. Accordingly the appeal will be rejected as improperly filed.

ORDER: The appeal is rejected.